



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,651	09/25/2003	Masayuki Naya	Q77613	7769
23373	7590	10/19/2005		
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			EXAMINER STOCK JR, GORDON J	
			ART UNIT 2877	PAPER NUMBER

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/669,651

Applicant(s)

NAYA, MASAYUKI

Examiner

Gordon J. Stock

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 and 37-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-34, 37 and 39-41 is/are allowed.
- 6) ☒ Claim(s) 38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. Amendment received July 28, 2005 has been entered into the file.

#### *Claim Rejections - 35 USC § 102*

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. **Claim 38** is rejected under 35 U.S.C. 102(a) as being anticipated by **Johansen (US 2003/0048452)—previously cited.**

As for **claim 38**, Johansen in an imaging spr apparatus discloses entering collimated light containing a plurality of wavelengths (Fig. 1a: 100, 110 and 120) through a dielectric block (Fig. 1a: 210) of a measuring unit (Fig. 1a: 200) comprising a thin film layer that satisfies an angle condition for SPR (paragraph 0063); selecting a collimated light beam having a predetermined wavelength from the collimated light beam totally reflected from said interface with wavelength selecting means (Fig. 5: 550, 560a-560c); measuring the distribution of optical intensities on the cross section of selected light beam using two dimensional ccd cameras (Fig. 5: 510a-510c; paragraph 0076).

In addition, the wavelength selecting means comprise: separating means (Fig. 5: 550); selecting means (Fig. 5: 560a-560c); a sweeping means, the orthogonal angular orientation between the filters (Fig. 5: 560c orthogonal to 560b, 560a orthogonal to 560b); wherein, a plurality of wavelengths are selected simultaneously, three (Fig. 5: 560a-560c).

#### *Allowable Subject Matter*

- 4.. **Claims 1-34, 37, 39-41** are allowed.

As to **claim 1**, the prior art of record, taken alone or in combination, fails to disclose or render obvious in a measuring method the particular selecting step comprising variable selection, in combination with the rest of the limitations of **claims 1-2 and 40**.

As to **claim 3**, the prior art of record, taken alone or in combination, fails to disclose or render obvious in a measuring apparatus the particular selecting means comprising variable selection, in combination with the rest of the limitations of **claims 3-34 and 37**.

As to **claim 39**, the prior art of record, taken alone or in combination, fails to disclose or render obvious in a measuring apparatus the particular wavelength selecting means comprising a rotatable diffraction grating and a slit, in combination with the rest of the limitations of **claim 39**.

As to **claim 41**, the prior art of record, taken alone or in combination, fails to disclose or render obvious in a measuring apparatus the particular wavelength selecting means, in combination with the rest of the limitations of **claim 41**.

#### ***Response to Arguments***

5. Applicant's arguments, see Remarks, filed July 28, 2005, with respect to the rejection of claims 1-39 under 35 U.S.C. 112 second paragraph have been fully considered and are persuasive. The rejection under 35 U.S.C. 112 second paragraph has been withdrawn. In addition, applicant's arguments, see Remarks, filed July 28, 2005, with respect to the rejection of claims 1-4, 11-12, and 36 under 35 U.S.C. 102(a) and claims 5-10, 13-16 under 35 U.S.C. 103(a) have been fully considered and are persuasive. The rejections under 35 U.S.C. 102(a) and 35 U.S.C. 103(a) have been withdrawn. However, the rejection of claim 38 35 U.S.C. 102(a) remains for no argument has been made and claim 38 does not contain the amended limitation comprising "variably selecting" as in claim 3.

*Conclusion*

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

*Fax/Telephone Numbers*

If the applicant wishes to send a fax dealing with either a proposed amendment or a discussion with a phone interview, then the fax should:

1) Contain either a statement "DRAFT" or "PROPOSED AMENDMENT" on the fax cover sheet; and

2) Should be unsigned by the attorney or agent.

This will ensure that it will not be entered into the case and will be forwarded to the examiner as quickly as possible.

*Papers related to the application may be submitted to Group 2800 by Fax transmission. Papers should be faxed to Group 2800 via the PTO Fax machine located in Crystal Plaza 4. The form of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CP4 Fax Machine number is: (703) 872-9306*

Art Unit: 2877

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gordon J. Stock whose telephone number is (571) 272-2431.

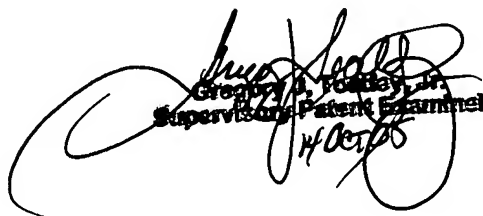
The examiner can normally be reached on Monday-Friday, 10:00 a.m. - 6:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr., can be reached at 571-272-2800 ext 77.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private Pair system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gs

October 13, 2005  
Art Unit 2877

  
Gregory J. Toatley, Jr.  
Supervisory Patent Examiner